

**Senator Todd Weiler** proposes the following substitute bill:

**REPRODUCTIVE EDUCATION AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Justin L. Fawson**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill amends and enacts provisions related to instruction in health and sex education.

**Highlighted Provisions:**

This bill:

- defines terms;
- modifies instruction in health to include instruction in refusal skills and the harmful effects of pornography;
- clarifies ambiguous language, updates outdated terminology, and repeals repetitive language;
- amends definitions for required parental consent; and
- makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



**53G-10-402**, as renumbered and amended by Laws of Utah 2018, Chapter 3

**53G-10-403**, as enacted by Laws of Utah 2018, Chapter 3

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **53G-10-402** is amended to read:

**53G-10-402. Instruction in health -- Parental consent requirements -- Conduct and speech of school employees and volunteers -- Political and religious doctrine prohibited.**

(1) As used in this section:

(a) "Board" means the State Board of Education.

(b) "Local school board" means:

(i) a local board of education elected in accordance with Section **53G-4-201**; or

(ii) a charter school governing board, as defined in Section **53G-5-102**.

(c) "Parent" means a parent or legal guardian.

(d) "Refusal skills" means instruction:

(i) in a student's ability to clearly and expressly refuse sexual advances by a minor or adult;

(ii) in a student's obligation to stop the student's sexual advances if refused by another individual;

(iii) informing a student of the student's right to report and seek counseling for unwanted sexual advances;

(iv) in sexual harassment; and

(v) informing a student that a student may not consent to criminally prohibited activities or activities for which the student is legally prohibited from giving consent, including the electronic transmission of sexually explicit images by an individual of the individual or another.

~~[(1)]~~ (2) (a) The ~~[State Board of Education]~~ board shall establish curriculum requirements under Section **53E-3-501** that include instruction in:

(i) community and personal health;

(ii) physiology;

(iii) personal hygiene; ~~and~~

(iv) prevention of communicable disease[-];

(v) refusal skills; and

(vi) the harmful effects of pornography.

(b) (i) That instruction shall stress:

(A) the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods for preventing certain communicable diseases; and

(B) personal skills that encourage individual choice of abstinence and fidelity.

(ii) (A) At no time may instruction be provided, including responses to spontaneous questions raised by students, regarding any means or methods that facilitate or encourage the violation of any state or federal criminal law by a minor or an adult.

(B) Subsection [(+) (2)(b)(ii)(A)] does not preclude an instructor from responding to a spontaneous question as long as the response is consistent with the provisions of this section.

(c) (i) The board shall recommend instructional materials for use in the curricula required under Subsection [(+) (2)(a)] after considering evaluations of instructional materials by the State Instructional Materials Commission.

(ii) A local school board may choose to adopt:

(A) the instructional materials recommended under Subsection [(+) (2)(c)(i)]; or

(B) other instructional materials as provided in [state] board rule.

(iii) The [state] board rule made under Subsection [(+) (2)(c)(ii)(B)] shall include, at a minimum:

(A) that the materials adopted by a local school board under Subsection [(+) (2)(c)(ii)(B)] shall be based upon recommendations of the school district's or charter school's Curriculum Materials Review Committee that comply with state law and [state] board rules emphasizing abstinence before marriage and fidelity after marriage, and prohibiting instruction in:

(I) the intricacies of intercourse, sexual stimulation, or erotic behavior;

(II) the advocacy of premarital or extramarital sexual activity; or

(III) the advocacy or encouragement of the use of contraceptive methods or devices;

~~[(IV) the advocacy of sexual activity outside of marriage;]~~

(B) that the adoption of instructional materials shall take place in an open and regular meeting of the local school board for which prior notice is given to parents ~~[and guardians]~~ of

students attending the respective schools [~~in the district~~] and an opportunity for [~~them~~] parents to express their views and opinions on the materials at the meeting;

(C) provision for an appeal and review process of the local school board's decision; and

(D) provision for a report by the local school board to the [~~State Board of Education~~] board of the action taken and the materials adopted by the local school board under Subsections [~~(1)~~] (2)(c)(ii)(B) and [~~(1)~~] (2)(c)(iii).

[~~(2)~~] (3) (a) [~~Instruction~~] A student shall receive instruction in the courses described in Subsection [~~(1) shall be consistent and systematic in grades eight through~~] (2) on at least two occasions during the period that begins with the beginning of grade 8 and the end of grade 12.

(b) At the request of the board, the Department of Health shall cooperate with the board in developing programs to provide instruction in those areas.

[~~(3)~~] (4) (a) The board shall adopt rules that:

(i) provide that the parental consent requirements of Sections 76-7-322 and 76-7-323 are complied with; and

(ii) require a student's parent [~~or legal guardian~~] to be notified in advance and have an opportunity to review the information for which parental consent is required under Sections 76-7-322 and 76-7-323.

(b) The board shall also provide procedures for disciplinary action for violation of Section 76-7-322 or 76-7-323.

[~~(4)~~] (5) (a) In keeping with the requirements of Section 53G-10-204, and because school employees and volunteers serve as examples to their students, school employees or volunteers acting in their official capacities may not support or encourage criminal conduct by students, teachers, or volunteers.

(b) To ensure the effective performance of school personnel, the limitations described in Subsection [~~(4)~~] (5)(a) also apply to a school [employees or volunteers acting outside of their] employee or volunteer acting outside of the school employee's or volunteer's official capacities if:

(i) [~~they~~] the employee or volunteer knew or should have known that [~~their~~] the employee's or volunteer's action could result in a material and substantial interference or disruption in the normal activities of the school; and

(ii) that action does result in a material and substantial interference or disruption in the

normal activities of the school.

(c) ~~[Neither the State Board of Education nor local school districts may]~~ The board or a local school board may not allow training of school employees or volunteers that supports or encourages criminal conduct.

(d) The ~~[State Board of Education]~~ board shall adopt rules implementing this section.

(e) Nothing in this section limits the ability or authority of the ~~[State Board of Education and]~~ board or a local school [boards] board to enact and enforce rules or take actions that are otherwise lawful, regarding educators', employees', or volunteers' qualifications or behavior evidencing unfitness for duty.

~~[(5)]~~ (6) Except as provided in Section 53G-10-202, political, atheistic, sectarian, religious, or denominational doctrine may not be taught in the public schools.

~~[(6)]~~ (7) (a) ~~[Local school boards and their]~~ A local school board and a local school board's employees shall cooperate and share responsibility in carrying out the purposes of this chapter.

(b) ~~[Each school district]~~ A local school board shall provide appropriate ~~[inservice training for its]~~ professional development for the local school board's teachers, counselors, and school administrators to enable them to understand, protect, and properly instruct students in the values and character traits referred to in this section and Sections 53E-9-202, 53E-9-203, 53G-10-202, 53G-10-203, 53G-10-204, and 53G-10-205, and distribute appropriate written materials on the values, character traits, and conduct to each individual receiving the ~~[inservice training]~~ professional development.

(c) ~~[The written materials shall also be made]~~ A local school board shall make the written materials described in Subsection (7)(b) available to classified employees, students, and parents ~~[and guardians]~~ of students.

(d) In order to assist ~~[school districts]~~ a local school board in providing the ~~[inservice training]~~ professional development required under Subsection ~~[(6)]~~ (7)(b), the ~~[State Board of Education]~~ board shall, as appropriate, contract with a qualified individual or entity possessing expertise in the areas referred to in Subsection ~~[(6)]~~ (7)(b) to develop and disseminate model teacher ~~[inservice programs which districts]~~ professional development programs that a local school board may use to train the individuals referred to in Subsection ~~[(6)]~~ (7)(b) to effectively teach the values and qualities of character referenced in ~~[that subsection]~~ Subsection (7).

(e) In accordance with the provisions of Subsection ~~[(4)]~~ (5)(c), ~~[inservice training]~~ professional development may not support or encourage criminal conduct.

(8) A local school board shall review every two years:

(a) local school board policies on instruction described in this section;

(b) for a local board of education of a school district, data for each county that the school district is located in, or, for a charter school governing board, data for the county in which the charter school is located, on the following:

(i) teen pregnancy;

(ii) child sexual abuse; and

(iii) sexually transmitted diseases and sexually transmitted infections; and

(c) the number of pornography complaints or other instances reported within the jurisdiction of the local school board.

~~[(7)]~~ (9) If any one or more provision, subsection, sentence, clause, phrase, or word of this section, or the application thereof to any person or circumstance, is found to be unconstitutional, the balance of this section shall be given effect without the invalid provision, subsection, sentence, clause, phrase, or word.

Section 2. Section **53G-10-403** is amended to read:

**53G-10-403. Required parental consent for sex education instruction.**

(1) As used in this section:

(a) "Parent" means the same as that term is defined in Section [53G-10-205](#).

~~[(a)]~~ (b) (i) "[Human sexuality] Sex education instruction" means any course material, unit, class, lesson, activity, or presentation that, as the focus of the discussion, provides instruction or information to a student about:

(A) sexual abstinence;

(B) human sexuality;

(C) human reproduction;

(D) reproductive anatomy;

(E) physiology;

(F) pregnancy;

(G) marriage;

(H) childbirth;

(I) parenthood;

(J) contraception;

(K) HIV/AIDS; ~~[or]~~

(L) sexually transmitted diseases~~[-];~~ or

(M) refusal skills, as defined in Section [53G-10-402](#).

(ii) "~~[Human sexuality]~~ Sex education instruction" does not include child sexual abuse prevention instruction described in Section [53G-9-207](#).

~~[(b) "Parent" means the same as that term is defined in Section [53G-10-205](#).]~~

(c) "School" means the same as that term is defined in Section [53G-10-205](#).

(2) A school shall obtain prior written consent from a student's parent before the school may provide ~~[human sexuality]~~ sex education instruction to the student.

(3) If a student's parent chooses not to have the student participate in ~~[human sexuality]~~ sex education instruction, a school shall:

(a) waive the requirement for the student to participate in the ~~[human sexuality]~~ sex education instruction; or

(b) provide the student with a reasonable alternative to the ~~[human sexuality]~~ sex education instruction requirement.

(4) In cooperation with the student's teacher or school, a parent shall take responsibility for the parent's student's ~~[human sexuality]~~ sex education instruction if a school:

(a) waives the student's ~~[human sexuality]~~ sex education instruction requirement in Subsection (3)(a); or

(b) provides the student with a reasonable alternative to the ~~[human sexuality]~~ sex education instruction requirement described in Subsection (3)(b).

(5) A student's academic or citizenship performance may not be penalized if the student's parent chooses not to have the student participate in ~~[human sexuality]~~ sex education instruction as described in Subsection (3).